GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Tribal Welfare Department – Appeal Petition filed by Smt. G.Siva Kumari, D/o late G.Subbaiah, R/o Chittoor District, against the proceedings No.Rc.C5(M) 8996/95, dated 29.01.2008 of the District Collector, Nellore, under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes)- Regulation of Issue of Community Certificates Act, 1993 (AP Act No.16/1993) – Appeal Petition allowed – Orders - Issued.

SOCIAL WELFARE (TW.CV.2) DEPARTMENT

G.O.Ms.No.129 Dated:06.08.2018
Read the following:

1. Proceedings of the District Collector, SPSR Nellore, Rc.No.C5(M), 8986/95, dated 29.01.2008.
2. Appeal Petition filed by Smt. G. Siva Kumari, D/o G. Subbaiah, Dr. Cousins Street, Madanapalli, Chittoor District, before the Government, dated 27.02.2008.
3. Order of the Hon'ble APHC in W.P.No.6899/2008, dated 31.03.2008 filed by Smt. G. Siva Kumari.
4. Govt. Memo No.1708/CV.2/2008, dated 18.03.2008.
5. From the District Collector, SPSR Nellore, Rc.No.C5(M), 937/2008, dated 13.09.2008.
6. Govt. letter No. 1708/CV.2/2008, dated: 21.10.2008, 02.09.2009, 05.03.2010 & 10.06.2010.
7. Govt. Memo No. 1708/CV.2/2008, dated 24.06.2015, 17.11.2015 & 01.05.2018.
8. Written arguments along with attested Xerox copies filed by the appellant, dt: .07.2018.

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ORDER:

In the reference 1st read above, the District Collector, SPSR Nellore has issued orders cancelling ST-Yanadi caste certificate obtained from the then Tahsildar, Buchireddypalem, SPSR Nellore District in the year 1987& 1989 by Smt. G.Siva Kumari, D/o late G.Subbaiah.

2. In the reference 2nd read above, Smt. G.Siva Kumari, D/o late G.Subbaiah, has filed an Appeal Petition before the Government, against the Proceedings of the District Collector, SPSR Nellore. After examining the said Appeal Petition, Government have admitted the Appeal Petition and stay rejected and called for the parawise remarks and connected records from the District Collector, SPSR Nellore in the reference 4th read above.

3. In the reference 3rd read above, Smt. G.Siva Kumari, D/o late G.Subbaiah, has filed W.P.No.6899/2008 before the Hon'ble High Court of Andhra Pradesh, Hyderabad, against the Government for not passing any orders on the stay application filed by the appellant & proceedings of the District Collector, SPSR Nellore dated 29.01.2008. The Hon'ble High Court of Andhra Pradesh, Hyderabad, while disposing the said W.P., on 31.03.2008 has directed the Government to deal with the appeal preferred by the writ petitioner on its merits and dispose it of, after providing an opportunity of hearing to the writ petitioner, on or before 30th September 2008. But, due to several administrative difficulties the matter could not be disposed off within the time limit as directed by the Hon'ble High Court in the said W.P., however, after giving notices from time to time to the Appellant through her Counsel the matter has been examined by the Appellate Authority.

4. In the reference 5th read above, the District Collector, SPSR Nellore has furnished the Parawise remarks and the connected records on the Appeal Petition filed by Smt. G.Siva Kumari, D/o late G.Subbaiah.

5. The said Appeal Petition has been posted for hearing on 30.10.2008, 19.09.2009, 19.03.2010, 25.06.2010, 25.07.2015, 28.11.2015 & finally on 19.05.2018 and the same has been informed to the Appellant and the Counsel for the Appellant in the reference 6th & 7th read above, and they were requested to attend for the hearing along with all Documentary Evidences/ Certificates in support of the community claim, failing which, it will be construed that there is no explanation what-so-ever to furnish in the matter and that the case will be decided based on the material available with the Government. In the reference 8th read above, the appellant has filed written arguments and attested documents in support of her ST-Yanadi community claim.

6. After hearing both the sides and on perusal of the records/ the copies of evidences/academic record/ grounds filed by the Appellant/ the parawise remarks submitted by the District Collector, SPSR Nellore and proceedings of the District Collector, SPSR Nellore, dated 29.01.2008 the Appellate Authority is observed that :

I. The appellant in her grounds has claimed that her father belongs to ST-Yanadi community and her family members belong to Yanadi community. The District Collector

[P.T.O]

failed to consider the affidavit evidence filed in support of the appellant. Smt. Nagamunthala Venkamma, Kalluri Venkata Ratnam and Nellore Ramaiah, whose affidavits are filed before the DLSC, categorically stated that they know the maternal grandparents of the appellant, who belong to Yanadi community, who belong to Yanadi community and there are people with surname of Gopisetti in Yanadi community, however the District Collector failed to take these aspects into consideration and on the other hand relied on report of the Director of Tribal Welfare, which is evidently submitted behind the back of the appellant and the same is not furnished to the appellant, violate the principles of the natural justice.

II. The District Level Scrutiny Committee has observed that there are no families with surnames of Gopisetty and Chalamcharla in Yanadi (ST) Community in the village Buchireddypalem. Smt. Jayamma, (mother of the petitioner) is the daughter of Sri Perisetty Krishnaiah, Buchireddypalem village who belongs to Balija Caste. Sri Gopisetty Subbarao is son of G. Seshaiah of Buchireddypalem who belongs of Balija Caste. In the rewritten register her caste was recorded as Yanadi, while in the original register appellant caste was recorded as Balija. Thus, the caste entry of Gopisetty Sivakumari was fabricated in the rewritten register of Elementary School for the year 1972 with a view to create evidence to show that Kum.G.Shivakumari. Further the DLSC has gone through the material on record and the statement of advocate given on behalf of appellant and the report of DTW, Hyderabad it is proved that the individual grabbed the benefits earmarked for the welfare of STs thereby depriving a genuine ST candidates. Based on the DLSC findings, the District Collector has cancelled the appellant ST-Yanadi Caste Certificate.

III. Under section 6 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (AP Act No.16/1993) the burden of proof lies on the Appellant only.

IV. The Appellate Authority is observed that during the course of hearing of the case that the appellant not present and there is no representation for the appellant and proof of service of notice is filed indicating that the notice served on appellant by concern as such the date of hearing is aware by the appellant but she has not turned up and there is no representation on her behalf, on seeing the record the same is pending since several years as such no other go the same is ordered for orders on merits in the absence of the appellant. On verification of the documents and the grounds of appeal and Para wise remarks as well as the other documents and material available on the record it is noticed that the contention of the appellant that the appellant admittedly born to late Sri Gopisetty Subba Rao (Subbaiah) and to Smt. Jayamma. As per the records, late Sri Gopisetty Subba Rao (Subbaiah), belongs to “Yanadi” community and his entire family belongs to ST-Yanadi community. Further as observed from the voters list of Siddipuram grampanchayat of 2005 that Sri Gopisetty Ramanaiah S/o Ramaiah, who is elder brother of the father of the appellant caste recorded as Scheduled Tribe and the relatives of the appellant’s father belongs to Scheduled Tribe. That as seen from the record of the record sheet under admission No.0034 pertaining to father of the appellant it is mentioned that the caste of him as Yanadi caste and his date of birth is 04-03-1946 and same is pertaining to the year 1951 and further it is noticed that as per the record the appellant brought up as ST. The said evidence clearly establishes that the appellant’s father belongs to ST Yanadi caste and as per the above, he discharge his burden as per the act and rules.

V. Further, it is observed that in Circular Memo. No.10956/CV1/97-2, dt.16.2.1998 instructions were issued by the Government for issuance of Caste Certificates. As per the said instructions general instructions for claiming Community Certificates are as follows:

General Instructions :- (Applicable in all cases)
Where a person claims to belong to Scheduled Caste or Scheduled Tribe by birth it should be verified:-

i. that the person and the parents actually belong to the community claimed;
ii. that this community is included in the Constitution (Scheduled Castes and Scheduled Tribes) Order, 1950 as amended in 1976, which specified the Scheduled Castes or Scheduled Tribes in relation to the State of Andhra Pradesh;
iii. that the person belongs to the State of Andhra Pradesh and the area within the State in respect of which the community has been Scheduled;

[Contd..]

Status of the Off-spring of a couple where one of the spouses is a member of Scheduled Caste and the other that of a Scheduled Tribe.

As regards the status of the off-spring whose father is a member of Scheduled Caste and mother of a Schedule Tribe, the prima-facie presumption is in favour of the child possessing the caste of the father, in the large majority of cases, having regard to the concept of domicile explained in para IV above. Apart from this, it may also be a relevant criterion to see whether the child has been accepted and assimilated in the Scheduled Caste community to which the father belongs. The same principal will also apply to the case of an off-spring whose mother is a member of a Scheduled Caste and father of a Scheduled Tribe. However, each case has to be examined in the light of the attendant facts and circumstances.

As per the said instructions stated supra, in the instant case, the appellant's father belongs to ST-Yanadi community and he brought up his children in the fold of ST-Yanadi community. The appellant has also submitted written arguments and relevant documentary evidences in-support of her ST-Yanadi community claim before the Appellate Authority i.e. her father's study certificate for the year 1951 and her paternal uncles caste certificates and other relevant material. That taking consideration of the above and the material available on the record that it can be concluded that the lower authority failed to observe the finding of the concerned above.

7. In view of the several reasons recorded in the paras supra, the Government, in exercise of the powers conferred under Section 7(2) of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act 1993 (Act No.16 of 1993), hereby allow the Appeal Petition filed by Smt. G.Siva Kumari, D/o late G.Subbaiah, by upholding her Scheduled Tribe (Yanadi) community claim and ST-Yanadi caste certificate issued by the then Tahsildar, Buchireddypalem, SPSR Nellore District and the Proceedings of the District Collector, SPSR Nellore issued in the reference 1st read above are set- aside.

8. The District Collector, SPSR Nellore is directed to take necessary consequential action in the matter.

9. The records (containing Rc.No.C5(M), 8986/95, dated 29.01.2008, CF: 1-466 & NF: 1-24) received from the District Collector, SPSR Nellore through the reference 5th read above, are returned herewith in original to the District Collector, SPSR Nellore and he is requested to acknowledge the receipt of the same, immediately.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

S.S. RAWAT
PRINCIPAL SECRETARY TO GOVERNMENT

To
The District Collector, SPSR Nellore.
(with original records) (BY RPAD)

Smt. G. Siva Kumari, D/o G. Subbaiah,
R/o 2-87/B, Dr. Cousins Street,
Madanapalli, ChittoOr District.

M/s. D.V.Nagarjuna Babu, Advocate,
35/RT, Vijayanagar Colony,
Hyderabad-57.

The Commissioner & Inspector General of Registration and
Stamps Department, Vijayawada. (for necessary action)
Copy to :
The Director of Tribal Welfare, AP. Vijayawada.
The Director, TCR& TI, AP, Vijayawada.
The PS to M(SWE & TWE).
The PS to Principal Secretary(SW&TW).

// FORWARDED:: BY ORDER //

SECTION OFFICER